

Stenographic Transcript
Before the

Subcommittee on Personnel

COMMITTEE ON
ARMED SERVICES

UNITED STATES SENATE

HEARING TO MARK UP THE NATIONAL DEFENSE
AUTHORIZATION ACT FOR FISCAL YEAR 2017

Tuesday, May 10, 2016

Washington, D.C.

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HEARING TO MARK UP
THE NATIONAL DEFENSE AUTHORIZATION ACT
FOR FISCAL YEAR 2017

Tuesday, May 10, 2016

U.S. Senate
Subcommittee on Personnel
Committee on Armed Services
Washington, D.C.

The subcommittee met, pursuant to notice, at 11:04 a.m., in Room SD-G50, Dirksen Senate Office Building, Hon. Lindsey Graham, chairman of the subcommittee, presiding.

Members Present: Senators Graham [presiding], Wicker, Cotton, Tillis, Sullivan, Gillibrand, Blumenthal, and King.

1 OPENING STATEMENT OF HON. LINDSEY GRAHAM, U.S. SENATOR
2 FROM SOUTH CAROLINA

3 Senator Graham: All right. Here we go. Good morning.
4 The subcommittee will come to order.

5 The subcommittee meets today to mark an original bill,
6 the National Defense Authorization Act for Fiscal Year 2017.
7 Again, this year we will hold the subcommittee markup in
8 open session. I am confident that we can publicly conduct
9 our business without disclosing classified information or
10 adversely impacting the process. In this regard, I would
11 ask that any senator wishing to offer an amendment or raise
12 an issue of a classified nature, defer that for the full
13 committee's consideration.

14 While this subcommittee meeting is an open session, the
15 entire contents of the markup book are subject to amendment
16 throughout the consideration by Armed Services Committee.
17 It is, therefore, embargoed until passage by the full
18 committee.

19 Before we begin, I want to thank Ranking Member
20 Gillibrand for her hard work on this subcommittee. You have
21 been a joy to work with. And we have done some tough
22 things, some long overdue things, and very necessary things
23 for those who serve in the committee. And I could not have
24 done it without the cooperation you provided.

25 We have before today a legislative package that

1 contains 27 legislative -- 278 legislative provisions, 27
2 items of special interest, and six budget items. Since the
3 details of the legislative package were briefed to the
4 staffs of committee members last week, I will limit my
5 comments to some of the highlights.

6 Key aspects of the subcommittee markup: implementing
7 the Department of Defense Military Justice Review
8 recommendation, as modified, to amend the UCMJ. This is the
9 first time we have really looked at the UCMJ fully in about
10 30 years, and I am very proud of the work product. We have
11 strengthened the structure of the military justice system,
12 embracing fairness and efficiency in pre-trial and post-
13 trial procedures, reforming sentencing, guilty pleas, and
14 plea agreements. Streamlining the post-trial process.
15 Modernized the military appellate practice. Increasing
16 transparency and independent review of the military justice
17 system, improving the functionality of the punitive
18 articles.

19 Clarifying the definition of "sexual harassment" as a
20 form of misconduct on the spectrum of behavior that can
21 contribute to an increase in instances of sexual assault,
22 and to provide commanders and priests the ability to prevent
23 sexual harassment before it results in sexual assault.
24 Authorizes victims of offenses under the UCMJ to file
25 pleadings in response to a government appeal concerning

1 victim's rights related to a victim's sexual background,
2 psychotherapist victim privilege and the victim advocate
3 patient privilege. Require all child abuse to be reported
4 to military family and advocacy program offices.

5 Reauthorization of over 30 types of bonuses and special
6 pay aimed at encouraging enlistment, reenlistment, continued
7 service by active duty, Reserve component, and military
8 personnel. Funds that increase military pay of 1.6 percent
9 for all members of the Uniformed Services. Permanently
10 extends the authority to pay the special survivor indemnity
11 allowed under the Survivor's Benefit Plan, finally ending
12 the widows' tax. That has been hard, but we got there.

13 Authorizes a \$400 million increase in the Defense
14 Health Program budget for military health system reform.
15 Authorizes a \$40 million increase in the Defense Health
16 Program to maintain provider reimbursement rates for TRICARE
17 Comprehensive Autism Care Demonstration Program, something
18 that Senator Gillibrand has been a very strong advocate of.

19 It creates greater healthcare value for beneficiaries
20 by improving healthcare quality and experience of care.
21 Expands access to care and gives beneficiaries more choices
22 for getting healthcare. Authorizes a pilot program
23 commercial healthcare insurance coverage for Reserve
24 component members and their families. This is something I
25 am really excited about as an alternative to the current

1 TRICARE system for Guard and Reserve families who live in
2 remote areas. Creates high performing military civilian
3 integrated healthcare systems. Improves, expands, and
4 sustains combat casualty care skills training.

5 There are only -- these are only a few highlights of
6 what I think is a really good Personnel markup that is
7 focused on reform, outcomes, and better quality of life. At
8 the end of the day, if we cannot come together on taking
9 care of our men and women, we have lost our way up here.
10 Let it be said that we did come together.

11 Traditionally the subcommittee has used the chairman's
12 mark as a markup vehicle. Without objection, we used the
13 chairman's mark as a markup vehicle subject to amendment.

14 [No response.]

15 Senator Graham: No objection.

16 It has been the practice of the Armed Services
17 Committee that any amendment -- it has been the practice of
18 the Armed Services Committee that any amendment to add
19 funding must be accompanied by an offset. The total funding
20 level for military personnel in Defense healthcare
21 authorized by this subcommittee mark are consistent with the
22 President's budget request.

23 At this time, I would like Senator Gillibrand to make
24 her comments about the markup. And if there are any
25 amendments, we would ask that you would hold them for the

1 full committee.

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1 STATEMENT OF HON. KIRSTEN GILLIBRAND, U.S. SENATOR
2 FROM NEW YORK

3 Senator Gillibrand: Thank you, Mr. Chairman. I am so
4 grateful to Senator Graham for his leadership and his
5 steadfast determination to working on a bipartisan basis for
6 the benefit of our troops. I want to also thank your staff
7 for their continued bipartisan approach to the work of this
8 subcommittee, and I am just so grateful that we have been
9 able to continue our cooperative efforts to get something
10 really valuable for members of the military done in this
11 subcommittee.

12 I believe on balance that this mark is a really good
13 one. I think it is a great starting point for debate and
14 discussion about how best to serve our men and women in
15 uniform. In particular, there are a number of successes in
16 this mark that I am very excited about, provisions that will
17 help make the lives of men and women who serve better.

18 In particular, we did some very good work on sexual
19 assaults in the ranks and better care for victims. In
20 particular, we included all the recommendations of the
21 Military Justice Review Group, which will provide much-
22 needed updates to the Uniform Code of Military Justice and
23 better align it with the civilian justice system.
24 Implementation of these recommendations was extended to two
25 years rather than the one year recommended by the Review

1 Group to allow time for changes to the manual for courts
2 martial.

3 It also requires that the DOD Annual Report on Sexual
4 Assault to the Military includes the number and description
5 of sexual assaults in domestic abuse situations, and extends
6 the requirement for the report through 2025. It provides
7 Congress and the public with information about domestic
8 violence cases. We will now have a better picture of the
9 scope of sexual assaults against military members and
10 dependents, which is something that has been sorely lacking
11 for years. I do note, however, that the military is still
12 unable to track the prevalence of crimes against civilians
13 unless those civilians make a report that is then made known
14 to the DOD.

15 This mark requires service secretaries to establish
16 programs to ensure that trial and defense counsel have
17 sufficient experience and knowledge to effectively prosecute
18 or defend cases, or that there is adequate supervision and
19 oversight of counsel to ensure effective prosecutions and
20 defense in courts martial. It is imperative for the sake of
21 civil liberties that our judge advocates have the skills
22 necessary to properly defend the rights of the accused and
23 protect the interest of justice at courts martial.

24 This gives victims standing to file pleadings in
25 military appellate courts for issues involving the rights

1 when the accused has appealed his or her conviction. It
2 includes a committee statement expressing concern about the
3 crimes of sexual assault and rape where the assailant is in
4 a position of authority over the victim, and expressing the
5 committee's expectation that the use of rank, authority, or
6 position to commit a sexual assault or rape will be
7 considered an aggravating factor in the development of
8 sentencing parameters, which will be developed based on the
9 recommendations of the Military Justice Review Group.

10 It requires the GAO to review and report on the
11 interaction of offenses of hazing, sexual harassment,
12 domestic violence, and sexual assault, or other unwanted
13 sexual behavior to better understand how they are connected,
14 and the broader scope of the challenges. It provides
15 greater protection for military personnel who make a
16 protected whistleblower communication. This includes a
17 requirement that the secretary of the military department
18 take appropriate action to protect a member from the
19 imposition of negative personnel action when in the course
20 of an inspector general investigation it appears the
21 negative personnel was -- that the negative personnel was
22 prohibited. This protects members from suffering harm to
23 their careers while they await the outcome of what can be a
24 lengthy investigation into the retaliation -- retaliatory
25 action.

1 It also requires that the inspector general provide
2 notice on the status of the investigation to the member who
3 made the complaint. Lastly, it requires that the inspector
4 general provide uniform standards for conducting retaliatory
5 investigations, and provide training to investigators.

6 This mark also directs the Secretary of Defense, in
7 consultation with the Secretary of Veterans Affairs, to
8 establish a policy that enables all Department of Defense
9 and Department of Veterans Affairs healthcare providers to
10 administer exams to military members as they transition out
11 of the service and into civilian life, to take a restricted
12 report of sexual assault. This will allow service members
13 to get the help they need to handle the aftermath of an
14 assault without requiring notification to military
15 authorities. This also expresses the committee's
16 expectation that the system is developed to provide
17 increased public transparency for court martial proceedings
18 to provide comprehensive information to the public.

19 It provides public access to information about the
20 cases heard by the Discharge Review Board and Boards of
21 Correction for Military Records, including cases in which
22 PTSD or traumatic brain injuries have been -- may have been
23 caused the service member -- or may have caused the service
24 member to engage in misconduct that led to the member's
25 discharge.

1 It also allows greater flexibility for families who are
2 faced with a permanent change of station. I am happy to see
3 that the DOD supports allowing the families to remain behind
4 or move ahead of the service member if they need to finish
5 school, for example. However, I continue to strive for
6 additional support for military families, such as a housing
7 allowance, to offset the cost of maintaining two residences
8 during the period.

9 Guarantees paid leave for up to six weeks for the
10 primary caregiver and three weeks for the secondary
11 caregiver. This provision is an important step towards
12 ensuring that service members are able to take needed time
13 to care for and bond with a newborn or adopted child.
14 Incorporates the survey questions about family planning
15 needs among service members. It authorizes \$25 million for
16 Impact Aid, which would support schools with a higher number
17 of military dependents, and restores the reimbursement rates
18 for autism providers providing care under the Autism Demo
19 Program that were in effect on March 31, and directs the
20 Secretary to submit quarterly reports to Congress on access
21 to effectiveness of services under demonstration.

22 Lastly, there are invariably some provisions in this
23 mark that give me pause. But that said, this is the
24 beginning of a long process, and I look forward to working
25 with you here and at the full committee to address these

1 issues as we begin the legislative year working toward a
2 bill that will benefit our men and women in uniform.

3 Again, I want to thank Chairman Graham for his
4 cooperation and his leadership, and I want to thank his
5 staff -- Mr. Steve Barney, Dr. Al Edwards, Ms. Samantha
6 Clark, as well as the minority staff, Mr. Jonathan Clark and
7 Mr. Gary Leeling -- for their hard work in putting this mark
8 together. Thank you.

9 Senator Graham: I want to add my appreciation to both
10 Samantha and Jon and your staff. You did a really good job.
11 There was a lot coming into this committee that affects real
12 people and their families serving in the military. I think
13 we struck a good balance, and hopefully it will get better
14 at full committee.

15 Does any member have a comment that you would like to
16 make?

17 [No response.]

18 Senator Graham: If not, we received 26 amendments to
19 the chairman's mark that have been cleared by both sides.
20 This package has been provided to all members and is in
21 front of you. I will refer to the amendment number and the
22 basic subject matter.

23 The first amendment is Tillis 002. It clarifies the
24 hiring improvements for relocating spouses. And the last
25 amendment is Senator Blumenthal's amendment, Number 217,

1 modification to integrated healthcare delivery systems plan.
2 And all of these have been provided to you by your staff.

3 Without objection, these amendments to the chairman's
4 mark will be adopted by the -- yes, sir?

5 Senator King: I would like to request to be listed as
6 a co-sponsor of McCaskill 41 and 42, please.

7 Senator Graham: Without objection.

8 Senator King: Thank you.

9 Senator Blumenthal: Mr. Chairman, I -- first of all, I
10 want to thank you and the ranking member for including and
11 clearing five of my amendments. I also have a number of
12 additional amendments that can be addressed during the full
13 committee's markup of the Personnel section of the bill:
14 Amendment 49, continuity of care for recovering service
15 members; Amendment 96, the DOD tobacco policy; Amendment
16 143, higher education in TAP; Amendment 144, Veterans in
17 TAP; and Amendment 178, dietary supplement guidelines.
18 Thank you.

19 Senator Graham: Yes, sir.

20 Senator Sullivan: Mr. Chairman, first I want to -- I
21 want to thank you and Chairman McCain, Ranking Member Reed,
22 you, Ranking Member Gillibrand on the significant reforms
23 that we are undertaking. You know, a lot of discussion has
24 been focused on this might be the biggest DOD reform since
25 Goldwater-Nichols, and I think that that is very significant

1 across a number of areas.

2 I particularly want to highlight, as you noted in the
3 -- in your opening remarks, the UCMJ reforms. And I think
4 those are going to be very important as we move forward with
5 regard to our military members, making sure they have
6 justice. And I must say that I do not believe there is
7 anyone more qualified in the U.S. Senate to have led the
8 effort than you, Mr. Chairman, on the UCMJ reform given your
9 30-year career in the military as a JAG officer.

10 I did have one question for staff as it relates to some
11 of the healthcare reforms for active, Reserve, and retirees,
12 just about the second and third order effects that relate to
13 States with significant veteran populations that are -- have
14 significant rural populations, and we are looking at some
15 amendments in that regard. But I do not know if we have an
16 opportunity to ask the staff on that as we have looked at
17 the reforms if there are issues that relate to rural
18 communities with regard to these reforms.

19 Ms. Clark: Yes, sir. I am going to ask Dr. Edwards to
20 respond to that question.

21 Dr. Edwards: Thank you for your question, Senator. As
22 you know, we worked very strong -- very closely with Senator
23 Graham -- yes, sir. As you know, we worked very closely
24 with Senator Gillibrand and Senator Graham on trying to
25 improve the quality of the healthcare that beneficiaries

1 receive through this package of legislative provisions. We
2 also tried to improve opportunities for access to care to
3 give beneficiaries more choice for care.

4 There are also provisions in this mark that would
5 enhance the experience of care and create more health value
6 for beneficiaries. Health value is composed of quality, so
7 you want to improve quality of healthcare delivered if you
8 -- if you try to modernize the healthcare system. You also
9 want to improve the experience of care, and experience of
10 care is improving access, but it is also improving
11 beneficiary or patient satisfaction. And you have to have
12 those two together to improve the experience of care.

13 And hopefully you can do all this at lower cost, both
14 lower cost to the -- to the beneficiary ultimately, but
15 lower costs to the Department of Defense. So we feel like
16 we have a very comprehensive package of provisions that
17 would do those things.

18 Now, to answer your question specifically about rural
19 and remote areas. As I envision how the provisions are set
20 up in the bill, beneficiaries in unique situations in those
21 unique locations, like Alaska, like remote areas in the
22 western part of the United States, they would still have
23 very strong opportunities to use a high-value provider
24 network through the TRICARE medical support contracts just
25 as they do today.

1 The TRICARE Prime Remote Program would not go away. It
2 would remain in place to serve Guard and Reserve members,
3 and also other members on active duty who live in remote
4 locations. I am particularly aware of the unique situations
5 in places like Alaska having served there for four years at
6 Elmendorf Air Force Base.

7 And so, I think what we have done, and with the support
8 of staff members from your staffs who have worked with us
9 over the last week or so to craft amendments to the
10 underlying provisions in the bill, I think we have actually
11 made those provisions much better with their assistance to
12 protect the beneficiaries in those rural areas in the United
13 States where network providers may not be as readily
14 available. And in those situations, military treatment
15 centers, hospitals, and clinics where they are located, they
16 would -- in situations like that, they would have to be
17 beefed up with specialty care services to provide for
18 beneficiaries.

19 So, you know, I look forward to talking more about this
20 in full committee mark, but I think we have, with the help
21 of your staffs, really made some significant improvements
22 with all the provisions we have in the bill.

23 Senator Sullivan: Thank you, Mr. Chairman.

24 Senator Graham: Without objection, the recommendations
25 of the subcommittee will reported to the full committee, and

1 the staff will be authorized to draft bill and report
2 language implementing the agreements reached today, and to
3 make necessary technical and conforming changes.

4 Yes. We will adopt the manager's package without
5 amendments. Any objection?

6 [No response.]

7 Senator Graham: So ordered.

8 Okay. I will now entertain a motion to adopt the
9 subcommittee mark, as amended, and favorably report it to
10 the full committee.

11 Senator Gillibrand: Motion.

12 Senator Graham: All those in favor, say aye.

13 [A chorus of ayes.]

14 Senator Graham: All opposed, nay.

15 [No response.]

16 Senator Graham: It is adopted.

17 Before we conclude, I want to recognize again Senator
18 Gillibrand and her staff, Al and Gary.

19 Just in conclusion, this is the most comprehensive look
20 at military healthcare I have ever been involved in. We are
21 trying to make it better. There are going to be people who
22 are going to push back because change is hard to accept.
23 But the goal of change was to bring about efficiency, lower
24 costs for the beneficiary, and the Department of Defense,
25 and improve quality. We are thinking outside of the box,

1 and we are thinking outside the gate.

2 If we do not do anything, in about 20 years, 18 percent
3 of the Department of Defense budget is going to be military
4 healthcare related. That is an unsustainable path, so we
5 are trying to create sustainability, higher quality, better
6 access, and, quite frankly, expand the services. People
7 with special needs children are the biggest winners of this
8 markup.

9 So I want to thank Senator McCain for empowering all of
10 us to think outside the box. We have had hearings from some
11 of the most outstanding healthcare delivery systems in the
12 country. The goal is to make it better. This is the first
13 step in a very long journey.

14 Thank you all for being part of this subcommittee. I
15 am very proud of the committee's work.

16 With that, the subcommittee is adjourned.

17 [Whereupon, at 11:25 a.m., the hearing was adjourned.]

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